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4 Attorney for Defendant  
5 B & B Management Group, LLC,  
dba Bellach's Leather for Living  
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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN JOSE DIVISION

10 SUSAN SANDELMAN, AS TRUSTEE  
OF THE ESAN TRUST,

No. C08 00681 HRL

11 Plaintiff,

DECLARATION OF MIKEL D. BRYAN  
IN SUPPORT OF DEFENDANT'S  
MOTION FOR RELIEF FROM DEFAULT

12 v.

13 Complaint Filed: January 29, 2008

14 B&B PROPERTY MANAGEMENT, LLC,  
dba BELLACH'S LEATHER FOR LIVING,

Date: June 24, 2008

15 Defendant. / Time: 10:00 a.m.

Courtroom: 2

Judge: Honorable Howard R. Lloyd

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17 I, Mikel D. Bryan, declare that:

18 1. I am an attorney duly licensed to practice law in the State of California, and I am  
19 an admitted member to the Northern District of California and have been since February of 1981.

20 2. I was first contacted in the matter by the attorney for Bellach's Leather for Living  
21 Inc. ("Bellach's"), David N. Chandler on or about April 2, 2008. Mr. Chandler advised that  
22 Bellach's was then in a Chapter 11 proceeding in the Northern District of California, Santa Rosa  
23 Division. Mr. Chandler also advised that one of the outstanding leases in which the debtor,  
24 Bellach's was a lessee, was a commercial building located on Stevens Creek Boulevard in San  
25 Jose ("the San Jose lease"). The lessor, under the San Jose lease, was B & B Management  
26 Group, LLC ("B & B"). Mr. Chandler advised that the Plaintiff in the instant action had filed the  
27 present action seeking to foreclose on a note and leasehold deed of trust against B & B, but that  
28 the U.S. Trustee's office would not allow him to represent Bellach's, as their general Chapter 11

1 counsel, and represent the defendant, in this action, at the same time, because the managing  
2 member of B & B was also the President and principal shareholder of the Chapter 11 debtor. Mr.  
3 Chandler asked if I would represent B & B. I advise him I would talk to the managing member  
4 of B & B, and if mutually agreeable arrangements were made, I would agree to represent B & B  
5 in the present action. I then contacted Jerome Bellach, the managing member of B & B, to  
6 discuss the underlying case, and the retention of my office to represent B & B in the present  
7 action.

8       3. On April 3, 2008, after reviewing the underlying note and leasehold deed of trust,  
9 I prepared a Motion to Stay the present proceedings on behalf of B & B. I then called the  
10 attorney for the Plaintiff, David Horowitz, to discuss the status of the action, and the fact that I  
11 had agreed to represent B & B in that capacity, and that I had prepared a Motion to Stay the  
12 proceedings and was waiting for the managing partner of B & B to sign a declaration needed in  
13 support of the motion. During that same conversation, Mr. Horowitz and I began to discuss  
14 possible resolutions of the case, without having to proceed with the present action, and the  
15 contractual provisions mandating mediation and arbitration. Nothing was said by Plaintiff's  
16 counsel about B & B being in default of its time to answer the complaint under FRCP 55(a).

17       4. On Friday, April 4, 2008, I contacted the Court clerk to discuss filing motion  
18 papers and getting dates for hearing on the motion for stay, which I had prepared. I also  
19 contacted Mr. Horowitz to tell him that I would be filing a motion to stay the proceedings, but  
20 that I was waiting to meet with Mr. Bellach later in the day. (Mr. Bellach was at a scheduled  
21 bankruptcy hearing which lasted until approximately 3:30 or 4:00 p.m.) Nothing was said about  
22 filing the default of B & B, but Mr. Horowitz did state that B & B was in default under Rule 55  
23 because more than 20 days had elapsed since service was allegedly made on the defendant, B&B  
24 Property Management LLC ("B&BPM")

25       5. Shortly after 4:00 p.m., I met with Mr. Bellach to have him sign his declaration  
26 and approve the Motion for Stay documents. At that time, I was advised by Mr. Bellach that  
27 although the present action had been filed against B&BPM, no such entity was involved, and the  
28 true contracting entity was in fact B & B, not B&BPM. I then revised the motion and supporting

1 documents to make an appearance on behalf of the proper entity B & B, appearing as a party  
2 "erroneously sued as (B&BPM)." When I contacted Mr. Horowitz to advise him that I had met  
3 with Mr. Bellach and had finalized the motion, Mr. Horowitz told me his firm had electronically  
4 filed a Notice of Default at 3:23 p.m that same day with the Court.

5 6. I immediately requested that Mr. Horowitz stipulate to setting aside the default  
6 because he had failed to notify me of his intention to file such default notice, particularly in light  
7 of our prior discussion in which I had advised him of my representation of the assumed  
8 defendant, and that I would be meeting with the managing member of the assumed defendant, to  
9 finalize the Motion for Stay papers that very day. Mr. Horowitz would not commit to any such  
10 stipulation.

11 7. I researched the law regarding service of process and determined that the proper  
12 party had not been served, and immediately filed the Motion for Stay on behalf of the proper  
13 defendant, B & B. The Motion for Stay and supporting documents were electronically filed at  
14 5:12 p.m. on April 4, 2008.

15 8. At that time, no Clerk's default had been entered. In fact, no entry of default was  
16 entered by the Clerk until Monday, April 8, 2008, after the Motion to Stay had been filed on  
17 behalf of B & B.

18 9. On May 6, 2008, the Court unilaterally entered its orders striking the hearing date  
19 on the Motion for Stay, filed by B & B, because the Court found that the entry of the Clerk's  
20 default against the defendant, B&BPM, precluded B & B from any further defense in the case.  
21 The Court set June 24, 2008, as the hearing date on presumptive motions for entry of default  
22 judgment and/or defendant's motion to set aside the default under Rule 60 of the FRCP (sic).

23 10. On May 8, 2008, I filed an Ex Parte Application on behalf of B & B seeking to  
24 have the order of May 6, 2008 set aside on the grounds that no default had been entered against B  
25 & B, but only against B&BPM, a non-involved entity, and requesting the Motion for Stay be  
26 placed back on calendar for hearing.

27 11. On May 20, 2008, the Court denied the Ex Parte Application of B & B. When the  
28 Order denying the Ex Parte Application was received, I was unable to prepare the present Motion

1 for Relief from the Default entered by the Clerk for hearing on the June 24, 2008 calendar  
2 because I did not have sufficient time to provide the required 35 day notice.

3 12. Between April 4, 2008 and the present, I have continued to communicate with the  
4 Plaintiff's counsel; I have joined in the preparation of a Stipulation to submit this case to  
5 Mediation; and I have participated in the preparation of a joint case management statement,  
6 which was electronically filed on April 29, 2008.

7 13. I believe the defendant, B & B has a defense to the continued proceedings herein  
8 under the contractual obligations to mediate any disputes, and failing mediation, to resolve any  
9 issues through contractual arbitration.

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct. Executed this 29<sup>th</sup> day of May, 2008.

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14 Mikel D. Bryan  
15 Attorney for B & B Management Group, LLC  
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